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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

2002 OCT 29 P 3:41

WILLIAM A. MUNDELL

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Chairman

JIM IRVIN

OCT 29 2002

AZ CORP COMMISSION
DOCUMENT CONTROL

Commissioner

MARC SPITZER

Commissioner

DOCKETED BY

CAR

IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY FOR
AN ORDER OR ORDERS AUTHORIZING IT
TO ISSUE, INCUR, OR ASSUME EVIDENCES
OF LONG-TERM INDEBTEDNESS; TO
ACQUIRE A FINANCIAL INTEREST OR
INTERESTS IN AN AFFILIATE OR
AFFILIATES; TO LEND MONEY TO AN
AFFILIATE OR AFFILIATES; AND TO
GUARANTEE THE OBLIGATIONS OF AN
AFFILIATE OR AFFILIATES

DOCKET NO. E-01345A-02-0707

REPLY TO STAFF'S RESPONSE TO
ARIZONA PUBLIC SERVICE COMPANY'S
MOTION FOR PROTECTIVE ORDER

**REPLY OF PANDA GILA RIVER L.P. TO
STAFF'S RESPONSE TO APS' MOTION FOR PROTECTIVE
ORDER AND APS'S REPLY THERETO**

On October 16, 2002, Arizona Public Service Company ("APS") filed a Motion for Protective Order ("Motion"). On October 21, 2002, the Arizona Corporation Commission Utilities Division Staff ("STAFF") filed a Response to APS's Motion. On October 25, 2002, APS filed a Reply to Staff's Response in which it continued request that its Motion be granted. In short, the Commission should overrule APS's Motion as it is inappropriate as applied to Staff and unnecessary as applied to Panda Gila River, L.P. ("PGR") and other merchant intervenors.

APS's Motion seeks a protective order to prevent disclosure of "highly confidential trade secret information" to both STAFF and merchant intervenors. As APS's Reply notes, APS and the merchant generators have been working cooperatively to address access to confidential information and to enter into appropriate Protective Agreements that include provisions for the limited redaction of information." APS Reply at 3. In fact, APS and PGR have executed the Protective Agreement attached to APS's Motion and have exchanged a first set of Data Responses. PGR agreed to execute the Protective Agreement with the understanding that it reserved the right to challenge

1 whether redaction was appropriate in any instance, not simply on an item by item basis. PGR did
2 so in a good faith effort to move this proceeding along, believing it unnecessary to fight the issue
3 before PGR even knew how much information would be subject to redaction. It is because of this
4 understanding that PGR had not filed a response to APS's Motion, not because it agreed with the
5 substance of the Motion. Unfortunately, APS's Reply to STAFF'S response makes a Reply from
6 Panda necessary as APS has made it clear that it not simply trying to address its issue with Staff but
7 wants all parties subjected to the procedures identified in its Motion, including those parties who
8 have worked cooperatively.

9 APS's Reply does make it clear that APS is not seriously contending that Staff should not
10 have access to the information requested. Rather, APS is concerned that merchant intervenors will
11 receive access to information provided to STAFF or RUCO. To PGR's knowledge no merchant
12 intervenor has made such an assertion in this case. PGR for one has voluntarily agreed to operate
13 under a signed Protective Agreement that allows APS to redact certain information. Other
14 merchant intervenors have indicated that they want no access to confidential materials at this time.
15 As APS notes, the merchant intervenors have worked in good faith. Just as APS agreed that PGR's
16 signing of the Protective Agreement would be without prejudice to any later argument that PGR
17 may have that it should not be subject to the redaction restriction, PGR will agree that APS's
18 providing documents to STAFF or RUCO is without prejudice to a claim that the documents
19 encompass privileged information which is not subject to disclosure. Thus, it is clearly not
20 necessary, at this time, to rule on the merits of APS's Motion as it relates to the merchant
21 intervenors.

22 Based on the foregoing Panda suggests that the ALJ deny APS's Motion with respect to
23 STAFF or RUCO, find that production of documents to those entities is without prejudice to any
24 claim of trade secret protection as it relates to other parties and hold that the Motion is moot as to
25 the merchant intervenors. If issues arise at a later date, APS can always renew its Motion. If APS
26 insists on a ruling that will effect all parties, Panda requests leave to respond showing why the

1 Motion is without merit. An noted, Panda's non-response was based on an understanding with
2 APS, not acquiescence.

3 Respectfully submitted this 29th day of October, 2002, by:

4 PANDA GILA RIVER

5
6
7 By: 

8 Larry F. Eisenstat
9 Michael R. Engleman
10 Frederick D. Ochsenhirt
11 Dickstein Shapiro Morin & Oshinsky, LLP
12 2101 L Street, NW
13 Washington, DC 20037
14 Attorneys for TPS GP, Inc.

15 --and--

16 Jay L. Shapiro
17 Fennemore Craig
18 3003 N. Central Ave., Suite 2600
19 Phoenix, AZ 85012
20 Attorneys for Panda Gila River, L.P.

21 ORIGINAL and 10 copies of the
22 foregoing hand-delivered for
23 filing this 29th day of
24 October, 2002, to:

25 Docket Control
26 ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

Chris Kempley, Chief Counsel
ARIZONA CORPORATION COMMISSION
Legal Division
1200 West Washington
Phoenix, Arizona 85007

Ernest G. Johnson
Director, Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

1 Lyn Farmer, Chief Administrative Law Judge
2 Hearing Division
3 ARIZONA CORPORATION COMMISSION
4 1200 West Washington
5 Phoenix, Arizona 85007

6 COPY of the foregoing mailed, faxed or
7 Transmitted electronically
8 this 29th day of October, 2002, to:

9 All parties of Record

10 M. House

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



0000048801

INTERVENTION

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

WILLIAM A. MUNDELL
CHAIRMANJIM IRVIN
COMMISSIONERMARC SPITZER
COMMISSIONER

2002 SEP 23 P 3:12

AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY
FOR AN ORDER OR ORDERS
AUTHORIZING IT TO ISSUE, INCUR, OR
ASSUME EVIDENCES OF LONG-TERM
INDEBTEDNESS; TO ACQUIRE A
FINANCIAL INTEREST OR INTERESTS IN
AN AN AFFILIATE OR AFFILIATES; TO
LEND MONEY TO AN AFFILIATES OR
AFFILIATES; AND TO GUARANTEE THE
OBLIGATIONS OF AN AFFILIATE OR
AFFILIATES

Docket No. E-01345A-02-0707

Arizona Corporation Commission
DOCKETED

SEP 23 2002

DOCKETED BY

CAR

RUCO'S APPLICATION TO INTERVENE

I.

The RESIDENTIAL UTILITY CONSUMER OFFICE ("RUCO") hereby applies to the
Arizona Corporation Commission ("Commission") for an Order granting it leave to intervene in
the above-captioned proceeding.

II.

RUCO was established by the enactment of Arizona Revised Statutes, Section 40-461,
et seq., for the purpose of representing residential utility consumers in matters before the
Commission concerning regulated public service corporations.

III.

Arizona Revised Statutes, Section 40-464.A.2., specifically provides that the Director of
RUCO may do the following:

1 Prepare and present briefs, arguments, proposed rates or orders
2 and intervene or appear on behalf of residential utility consumers
3 before hearing officers and the Corporation Commission as a party
4 in interest and also participate as a party in interest pursuant to
5 Section 40-254 in proceedings relating to rate making or rate
6 design and involving public service corporations.

7
8 IV.

9 The residential utility consumers of Arizona Public Service Company, will be directly and
10 substantially affected by a Decision or Order of the Commission in this matter, therefore, it is
11 necessary and proper that RUCO intervene in the proceeding.

12 V.

13 In order to fulfill its statutory obligation to protect the residential utility consumers of this
14 State, RUCO must thoroughly examine the materials presented by the Company, and must
15 cross-examine witnesses appearing on behalf of the Company and any other parties.
16 Additionally, RUCO may present testimony and exhibits of its own in any hearings conducted
17 by the Commission in this matter.

18 VI.

19 The name, mailing address, and telephone number of the person upon whom service of
20 all documents is to be made is,

21 Scott S. Wakefield, Chief Counsel
22 Residential Utility Consumer Office
23 1110 W. Washington, Suite 220
24 Phoenix, Arizona 85007
(602) 364-4839

RESPECTFULLY SUBMITTED this 23rd day of September, 2002.



Scott S. Wakefield
Chief Counsel

1 AN ORIGINAL AND TEN COPIES
2 of the foregoing filed this 23rd day
of September, 2002 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

7 COPIES of the foregoing hand delivered/
8 mailed this 23rd day of September, 2002 to:

9 Lyn Farmer
10 Chief Administrative Law Judge
11 Hearing Division
12 Arizona Corporation Commission
13 1200 West Washington
14 Phoenix, Arizona 85007

15 Christopher Kempley, Chief Counsel
16 Legal Division
17 Arizona Corporation Commission
18 1200 West Washington
19 Phoenix, Arizona 85007

20 Ernest Johnson, Director
21 Utilities Division
22 Arizona Corporation Commission
23 1200 West Washington
24 Phoenix, Arizona 85007

Thomas L. Mumaw, Esq.
Pinnacle West Capital Corporation
Law Department
P.O. Box 53999
Mail Station 8695
400 N. 5th Street
Phoenix, AZ 85072-3999

Matthew P. Feeney, Esq.
Jeffrey B. Guldner, Esq.
Snell & Wilmer, LLP
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004-0001

By

Cheryl Fraulob
Cheryl Fraulob



0000048802

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

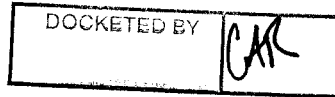
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2002 SEP 23 P 2:21

SEP 23 2002

AZ CORP COMMISSION
DOCUMENT CONTROL

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER



IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY FOR
AN ORDER OR ORDERS AUTHORIZING IT TO
ISSUE, INCUR, OR ASSUME EVIDENCES OF
LONG-TERM INDEBTEDNESS; TO ACQUIRE A
FINANCIAL INTEREST OR INTERESTS IN AN
AFFILIATE OR AFFILIATES; TO LEND MONEY
TO AN AFFILIATE OR AFFILIATES; AND TO
GUARANTEE THE OBLIGATIONS OF AN
AFFILIATE OR AFFILIATES.

DOCKET NO. E-01345A-02-0707

PROCEDURAL ORDER**BY THE COMMISSION:**

On September 16, 2002, Arizona Public Service Company ("APS") filed with Corporation
Commission ("Commission") the above-captioned application for financing approval
("Application").

IT IS THEREFORE ORDERED that a Procedural Conference on the Application will be held
on September 24, 2002, at 1:30 p.m., at the Commission's offices, 1200 W. Washington, Phoenix,
Arizona, to establish a procedural schedule for the preparation and conduct of this matter.

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 23rd day of September, 2002.

LYN FARMER
CHIEF ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered/faxed
This 13th day of September, 2002 to:

Matthew P. Feeney
Jeffrey B. Guldner
SNELL & WILMER
One Arizona Center
400 E. Van Buren
Phoenix, Arizona 85004

Thomas L. Mumaw
PINNACLE WEST CAPITAL CORP
LAW DEPARTMENT
P.O. Box 53999, MS 8695
Phoenix, Arizona 85004-3999

Jay L. Shapiro
FENNEMORE CRAIG
3003 N. Central Avenue, Suite 2600
Phoenix, Arizona 85012

By: Debbi Person
Debbi Person
Secretary to Lyn Farmer

cc:

Lindy Funkhouser
Scott S. Wakefield
RUCO
1110 W. Washington, Suite 220
Phoenix, Arizona 850070

Michael A. Curtis
William P. Sullivan
Paul R. Michaud
MARTINEZ & CURTIS, P.C.
2712 North 7th Street
Phoenix, Arizona 85006

Walter W. Meek, President
ARIZONA UTILITY INVESTORS ASSOCIATION
2100 N. Central Avenue, Suite 210
Phoenix, Arizona 85004

Mary-Ellen Kane
ACAA
2627 N. 3rd Street, Suite Two
Phoenix, Arizona 85004

Lawrence V. Robertson Jr.
MUNGER CHADWICK, PLC
333 North Wilmot, Suite 300
Tucson, Arizona 85711-2634

Albert Sterman
ARIZONA CONSUMERS COUNCIL
2849 East 8th Street
Tucson, Arizona 85716

Christopher Kempley, Chief Counsel
ARIZONA CORPORATION COMMISSION
Legal Division
1200 West Washington
Phoenix, AZ 85007

Ernest Johnson, Director
ARIZONA CORPORATION COMMISSION
Utilities Division
1200 West Washington
Phoenix, AZ 85007

ARIZONA REPORTING SERVICE, INC.
2627 N. Third Street, Suite Three
Phoenix, Arizona 85004-1103

Jay I. Moyes
MOYES STOREY
3003 N. Central Ave., Suite 1250
Phoenix, Arizona 85012

Roger K. Ferland
QUARLES & BRADY STREICH LANG, L.L.P.
Renaissance One
Two North Central Avenue
Phoenix, Arizona 85004-2391

Charles T. Stevens
ARIZONANS FOR ELECTRIC CHOICE & COMPETITION
245 W. Roosevelt
Phoenix, Arizona 85003

Greg Patterson
5432 E. Avalon
Phoenix, Arizona 85018

Aaron Thomas
AES NewEnergy
350 S. Grand Avenue, Suite 2950
Los Angeles, California 90071

Gary A. Dodge
HATCH, JAMES & DODGE
10 W. Broadway, Suite 400
Salt Lake City, Utah 84101

ORIGINAL



0000048803

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

2002 SEP 25 A 11:05

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY FOR
AN ORDER OR ORDERS AUTHORIZING IT TO
ISSUE, INCUR, OR ASSUME EVIDENCES OF
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AFFILIATE OR AFFILIATES.

DOCKET NO. E-01345A-02-0707

Arizona Corporation Commission

DOCKETED

SEP 25 2002

DOCKETED BY

CM

PROCEDURAL ORDER

BY THE COMMISSION:

On September 16, 2002, Arizona Public Service Company ("APS") filed with Corporation Commission ("Commission") the above-captioned application for financing approval ("Application").

On September 20, 2002, Panda Gila River, L.P. ("Panda") filed a Motion for Leave to Intervene. On September 23, 2002, the Residential Utility Consumer Office ("RUCO") filed an Application to Intervene.

By Procedural Order issued September 23, 2002, a Procedural Conference was held on September 24, 2002 to discuss the procedural schedule for this matter. At the Procedural Conference, intervention was granted to RUCO, and several entities orally moved to intervene. It was determined that APS would respond to any motions to intervene by Monday, September 30, 2002, and that replies to those responses would be filed by Thursday, October 3, 2002. Further, it was determined that a hearing would be necessary; that APS would file its direct testimony on or before October 11, 2002; that discovery responses would be provided within 5 business days; and that another Procedural Conference would be held on Friday, October 4, 2002 at 9:00 a.m. in order to set the date

1 for hearing and other dates for the filing of prefiled testimony.

2 This Procedural Order is being sent to the service list for Docket No. E-02-0051 for
3 informational purposes only. If any person/entity wishes to participate in this matter, a motion to
4 intervene should be filed in accordance with Commission rules. If any person/entity wishes to be on
5 the service list for this Docket without intervening, a letter stating such a request should be filed with
6 Docket Control. No further mailing will be provided without such a request.

7
8 IT IS THEREFORE ORDERED that a Procedural Conference on the Application will be held
9 on October 4, 2002, at 9:00 a.m., at the Commission's offices, 1200 W. Washington, Phoenix,
10 Arizona, to establish further procedural dates for the preparation and conduct of this matter.

11 IT IS FURTHER ORDERED that the Residential Utility Consumer Office is hereby granted
12 intervention.

13 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
14 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

15 DATED this 25th day of September, 2002.
16
17
18
19

20 *Lyn Farmer / by D. Nades*
21 LYN FARMER
22 CHIEF ADMINISTRATIVE LAW JUDGE
23
24
25
26
27
28

Copies of the foregoing mailed/delivered/faxed
This 25th day of September, 2002 to:

Lindy Funkhouser
Scott S. Wakefield
RUCO
1110 W. Washington, Suite 220
Phoenix, Arizona 85007

Michael A. Curtis
William P. Sullivan
Paul R. Michaud
MARTINEZ & CURTIS, P.C.
2712 North 7th Street
Phoenix, Arizona 85006

Attorneys for Arizona Municipal Power Users
Association, Mohave Electric Cooperative, Inc.,
Navopache Electric Cooperative, Inc., Reliant
Resources, Inc. & Primesouth, Inc.;
Wellton-Mohawk Generating Facility

Walter W. Meek, President
ARIZONA UTILITY INVESTORS
ASSOCIATION
2100 N. Central Avenue, Suite 210
Phoenix, Arizona 85004

Rick Gilliam
Eric C. Guidry
LAND AND WATER FUND OF THE ROCKIES
ENERGY PROJECT
2260 Baseline Road, Suite 200
Boulder, Colorado 80302

Terry Frothun
ARIZONA STATE AFL-CIO
5818 N. 7th Street, Suite 200
Phoenix, Arizona 85014-5811

Norman J. Furuta
DEPARTMENT OF THE NAVY
900 Commodore Drive, Building 107
San Bruno, California 94066-5006

Barbara S. Bush
COALITION FOR RESPONSIBLE ENERGY
EDUCATION
315 West Riviera Drive
Tempe, Arizona 85252

Sam Defraw (Attn. Code 001)
Rate Intervention Division
NAVAL FACILITIES ENGINEERING
COMMAND
Building 212, 4th Floor
901 M Street, SE
Washington, DC 20374-5018

Rick Lavis
ARIZONA COTTON GROWERS ASSOCIATION
4139 East Broadway Road
Phoenix, Arizona 85040

Steve Brittle
DON= T WASTE ARIZONA, INC.
6205 South 12th Street
Phoenix, Arizona 85040

COLUMBUS ELECTRIC COOPERATIVE, INC.
P.O. Box 631
Deming, New Mexico 88031

CONTINENTAL DIVIDE ELECTRIC
COOPERATIVE
P.O. Box 1087
Grants, New Mexico 87020

DIXIE ESCALANTE RURAL ELECTRIC
ASSOCIATION
CR Box 95
Beryl, Utah 84714

GARKANE POWER ASSOCIATION, INC.
P.O. Box 790
Richfield, Utah 84701

ARIZONA DEPT OF COMMERCE
ENERGY OFFICE
3800 North Central Avenue, 12th Floor
Phoenix, Arizona 85012

ARIZONA COMMUNITY ACTION ASSOC.
2627 N. 3rd Street, Suite 2
Phoenix, Arizona 85004

TUCSON ELECTRIC POWER CO.
Legal Dept - DB203
220 W 6th Street
P.O. Box 711
Tucson, Arizona 85702-0711

DOCKET NO. E-01345A-02-0707

1 A.B. Baardson
2 NORDIC POWER
3 6464 N. Desert Breeze Ct.
Tucson, Arizona 85750-0846

4 Jessica Youle
PAB300
5 SALT RIVER PROJECT
P.O. Box 52025
6 Phoenix, Arizona 85072-2025

7 Joe Eichelberger
MAGMA COPPER COMPANY
8 P.O. Box 37
Superior, Arizona 85273

9 Carl Dabelsten
CITIZENS UTILITIES COMPANY
10 2901 N. Central Avenue, Suite 1660
Phoenix, Arizona 85012-2736

11 Barry Huddleston
12 DESTEC ENERGY
P.O. Box 4411
13 Houston, Texas 77210-4411

14 Steve Montgomery
JOHNSON CONTROLS
15 2032 West 4th Street
Tempe, Arizona 85281

16 Terry Ross
17 CENTER FOR ENERGY AND
ECONOMIC DEVELOPMENT
18 P.O. Box 288
Franktown, Colorado 80116-0288

19 Larry McGraw
20 USDA-RUS
6266 Weeping Willow
21 Rio Rancho, New Mexico 87124

22 Jim Driscoll
ARIZONA CITIZEN ACTION
5160 E. Bellevue Street, Apt. 101
23 Tucson, AZ 85712-4828

24 William Baker
ELECTRICAL DISTRICT NO. 6
25 7310 N. 16th Street, Suite 320
Phoenix, Arizona 85020

Robert Julian
PPG
1500 Merrell Lane
Belgrade, Montana 59714

C. Webb Crockett
Jay L. Shapiro
FENNEMORE CRAIG, PC
3003 N. Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913
Attorneys for Panda Gila River, L.P.

Robert S. Lynch
340 E. Palm Lane, Suite 140
Phoenix, Arizona 85004-4529
Attorney for Arizona Transmission Dependent
Utility Group

K.R. Saline
K.R. SALINE & ASSOCIATES
Consulting Engineers
160 N. Pasadena, Suite 101
Mesa, Arizona 85201-6764

Carl Robert Aron
Executive Vice President and COO
ITRON, INC.
2818 N. Sullivan Road
Spokane, Washington 99216

Douglas Nelson
DOUGLAS C. NELSON PC
7000 N. 16th Street, Suite 120-307
Phoenix, Arizona 85020-5547
Attorney for Calpine Power Services

Lawrence V. Robertson Jr.
MUNGER CHADWICK, PLC
333 North Wilmot, Suite 300
Tucson, Arizona 85711-2634
Attorney for PG&E Energy Services Corp

Albert Sterman
ARIZONA CONSUMERS COUNCIL
2849 East 8th Street
Tucson, Arizona 85716

DOCKET NO. E-01345A-02-0707

Michael Grant
GALLAGHER & KENNEDY
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Attorneys for AEPCO, Graham County Electric
Cooperative, and Duncan Valley Electric
Cooperative.

Vinnie Hunt
CITY OF TUCSON
Department of Operations
4004 S. Park Avenue, Building #2
Tucson, Arizona 85714

Ryle J. Carl III
INTERNATION BROTHERHOOD OF
ELECTRICAL WORKERS, L.U. #1116
750 S. Tucson Blvd.
Tucson, Arizona 85716-5698

Robert J. Metli
CHEIFETZ & IANNITELLI, P.A.
3238 N. 16th Street
Phoenix, Arizona 85016
Attorney for Citizens Communications Co.

Craig Marks
Deborah R. Scott
Citizens Communications
2901 North Central Avenue, Ste. 1660
Phoenix, AZ 85012

William J. Murphy
CITY OF PHOENIX
2631 S. 22nd Avenue
Phoenix, Arizona 85009

Russell E. Jones
WATERFALL ECONOMIDIS CALDWELL
HANSHAW & VILLAMANA, P.C.
5210 E. Williams Circle, Suite 800
Tucson, Arizona 85711
Attorneys for Trico Electric Cooperative, Inc.

Christopher Hitchcock
HITCHCOCK & HICKS
P.O. Box 87
Bisbee, Arizona 85603-0087
Attorney for Sulphur Springs Valley
Electric Cooperative, Inc.

Andrew Bettwy
Debra Jacobson
SOUTHWEST GAS CORPORATION
5241 Spring Mountain Road
Las Vegas, Nevada 89150-0001

Barbara R. Goldberg
OFFICE OF THE CITY ATTORNEY
3939 Civic Center Blvd.
Scottsdale, Arizona 85251

PACIFICORP
201 S. Main, Suite 2000
Salt Lake City, Utah 84140

Timothy M. Hogan
ARIZONA CENTER FOR LAW
IN THE PUBLIC INTEREST
202 E. McDowell Rd., Suite 153
Phoenix, Arizona 85004

Marcia Weeks
18970 N. 116th Lane
Surprise, Arizona 85374

John T. Travers
William H. Nau
272 Market Square, Suite 2724
Lake Forest, Illinois 60045

Timothy Michael Toy
WINTHROP, STIMSON, PUTNAM & ROBERTS
One Battery Park Plaza
New York, New York 10004-1490

Raymond S. Heyman
Michael W. Patten
ROSHKA HEYMAN & DEWULF, PLC
400 E. Van Buren, Suite 800
Phoenix, Arizona 85004
Attorneys for Tucson Electric Power Co.

Chuck Miessner
NEV SOUTHWEST LLC
P.O. Box 711, Mailstop-DA308
Tucson, Arizona 85702-0711

Billie Dean
AVIDD
P O Box 97
Marana, Arizona 85652-0987

DOCKET NO. E-01345A-02-0707

Steven C. Gross
PORTER SIMON
40200 Truckee Airport Road
Truckee, California 96161-3307
Attorneys for M-S-R Public Power Agency

Donald R. Allen
John P. Coyle
DUNCAN & ALLEN
1575 Eye Street, N.W., Suite 300
Washington, DC 20005

Ward Camp
PHASER ADVANCED METERING SERVICES
400 Gold SW, Suite 1200
Albuquerque, New Mexico 87102

Betsy Galtney
IDAHO POWER COMPANY
P.O. Box 70
Boise, Idaho 83707

Libby Brydolf
CALIFORNIA ENERGY MARKETS
NEWSLETTER
2419 Bancroft Street
San Diego, California 92104

Paul W. Taylor
R W BECK
14635 N. Kierland Blvd., Suite 130
Scottsdale, Arizona 85254-2769

James P. Barlett
5333 N. 7th Street, Suite B-215
Phoenix, Arizona 85014
Attorney for Arizona Power Authority

Jay I. Moyes
MOYES STOREY
3003 N. Central Ave., Suite 1250
Phoenix, Arizona 85012
Attorneys for PPL Southwest Generation
Holdings, LLC; PPL EnergyPlus, LLC and PPL
Sundance Energy, LLC

Stephen L. Teichler
Stephanie A. Conaghan
DUANE MORRIS & HECKSCHER, LLP
1667 K Street NW, Suite 700
Washington, DC 20006

Kathy T. Puckett
SHELL OIL COMPANY
200 N. Dairy Ashford
Houston, Texas 77079

Peter Q. Nyce, Jr.
DEPARTMENT OF THE ARMY
JALS-RS Suite 713
901 N. Stuart Street
Arlington, Virginia 22203-1837

Michelle Ahlmer
ARIZONA RETAILERS ASSOCIATION
224 W. 2nd Street
Mesa, Arizona 85201-6504

Dan Neidlinger
NEIDLINGER & ASSOCIATES
3020 N. 17th Drive
Phoenix, Arizona 85015

Chuck Garcia
PNM, Law Department
Alvarado Square, MS 0806
Albuquerque, New Mexico 87158

Sanford J. Asman
570 Vinington Court
Dunwoody, Georgia 30350-5710

Patricia Cooper
AEP/CO/SSWEPCO
P.O. box 670
Benson, Arizona 85602

Steve Segal
LEBOEUF, LAMB, GREENE, & MACRAE
633 17th Street, Suite 2000
Denver, Colorado 80202-3620

Holly E. Chastain
SCHLUMBERGER RESOURCE
MANAGEMENT SERVICES, INC.
5430 Metric Place
Norcross, Georgia 30092-2550

Leslie Lawner
ENRON CORP
712 North Lea
Roswell, New Mexico 88201

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
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25
26
27
28

Alan Watts
Southern California Public Power Agency
529 Hilda Court
Anaheim, California 92806

Frederick M. Bloom
Commonwealth Energy Corporation
15991 Red Hill Avenue, Suite 201
Tustin, California 92780

Margaret McConnell
Maricopa Community Colleges
2411 W. 14th Street
Tempe, Arizona 85281-6942

Brian Soth
FIRSTPOINT SERVICES, INC.
1001 S.W. 5th Ave, Suite 500
Portland, Oregon 97204

Jay Kaprosy
PHOENIX CHAMBER OF COMMERCE
201 N. Central Ave., 27th Floor
Phoenix, Arizona 85073

Kevin McSpadden
MILBANK, TWEED, HADLEY AND
MCCLOY, LLP
601 S. Figueroa, 30th Floor
Los Angeles, California 90017

M.C. Arendes, Jr.
C3 COMMUNICATIONS, INC.
2600 Via Fortuna, Suite 500
Austin, Texas 78746

Patrick J. Sanderson
ARIZONA INDEPENDENT SCHEDULING
ADMINISTRATOR ASSOCIATION
P.O. Box 6277
Phoenix, Arizona 85005-6277

Roger K. Ferland
QUARLES & BRADY STREICH LANG, L.L.P.
Renaissance One
Two North Central Avenue
Phoenix, Arizona 85004-2391

Charles T. Stevens
ARIZONANS FOR ELECTRIC CHOICE &
COMPETITION
245 W. Roosevelt
Phoenix, Arizona 85003

S/l/po/02707po2

DOCKET NO. E-01345A-02-0707

Mark Sirois
ARIZONA COMMUNITY ACTION ASSOC.
2627 N. Third Street, Suite 2
Phoenix, Arizona 85004

Jeffrey Guldner
SNELL & WILMER
400 E. Van Buren,
One Arizona Center
Phoenix, Arizona 85004-0001

Thomas L. Mumaw
Senior Attorney
Pinnacle West Capital Corporation
P.O. Box 53999 MS 8695
Phoenix, AZ 85072-3999

Steven J. Duffy
RIDGE & ISAACSON PC
3101 N. Central Avenue, Suite 740
Phoenix, Arizona 85012

Greg Patterson
5432 E. Avalon
Phoenix, Arizona 85018

John Wallace
Grand Canyon State Electric Co-op
120 N. 44th Street, Suite 100
Phoenix, Arizona 85034-1822

Steven Lavigne
DUKE ENERGY
4 Triad Center, Suite 1000
Salt Lake City, Utah 84180

Dennis L. Delaney
K.R. SALINE & ASSOC.
160 N. Pasadena, Suite 101
Mesa, Arizona 85201-6764

Kevin C. Higgins
ENERGY STRATEGIES, LLC
30 Market Street, Suite 200
Salt Lake City, Utah 84101

Michael L. Kurtz
BORHM KURTZ & LOWRY
36 E. Seventh Street, Suite 2110
Cincinnati, Ohio 45202

DOCKET NO. E-01345A-02-0707

David Berry
P.O. Box 1064
Scottsdale, Arizona 85252

William P. Inman
Dept. of Revenue
1600 W. Monroe, Room 911
Phoenix, Arizona 85007

Robert Baltes
ARIZONA COGENERATION ASSOC.
7250 N. 16th Street, Suite 102
Phoenix, Arizona 85020-5270

Jana Van Ness
APS
Mail Station 9905
P.O. Box 53999
Phoenix, Arizona 85072-3999

David Couture
TEP
4350 E. Irvington Road
Tucson, Arizona 85714

Kelly Barr
Jana Brandt
SRP
Mail Station PAB211
P.O. Box 52025
Phoenix, Arizona 85072-2025

Randall H. Warner
JONES SKELTON & HOCHULI PLC
2901 N. Central Avenue, Suite 800
Phoenix, Arizona 85012

John A. LaSota, Jr.
MILLER LASOTA & PETERS, PLC
5225 N. Central Ave., Suite 235
Phoenix, Arizona 85012

Peter W. Frost
Conoco Gas and Power Marketing
600 N. Dairy Ashford, CH-1068
Houston, Texas 77079

Joan Walker-Ratliff
Conoco Gas and Power Marketing
1000 S. Pine,
P.O. Box 1267 125-4 ST
Ponca City, Oklahoma 74602

Vicki G. Sandler
C/o Linda Spell
APS Energy Services
P.O. Box 53901
Mail Station 8103
Phoenix, Arizona 85072-3901

Lori Glover
STIRLING ENERGY SYSTEMS
2920 E. Camelback Rd., Suite 150
Phoenix, Arizona 85016

Jeff Schlegel
SWEEP
1167 Samalayuca Drive
Tucson, Arizona 85704-3224

Howard Geller
SWEEP
2260 Baseline Rd., Suite 200
Boulder, Colorado 80302

Mary-Ellen Kane
ACAA
2627 N. 3rd Street, Suite Two
Phoenix, Arizona 85004

Aaron Thomas
AES NewEnergy
350 S. Grand Avenue, Suite 2950
Los Angeles, California 90071

Theresa Mead
AES NewEnergy
P.O. Box 65447
Tucson, Arizona 85728

Peter Van Haren
CITY OF PHOENIX
Attn: Jesse W. Sears
200 W. Washington Street, Suite 1300
Phoenix, Arizona 85003-1611

Robert Annan
ARIZONA CLEAN ENERGY INDUSTRIES
ALLIANCE
6605 E. Evening Glow Drive
Scottsdale, Arizona 85262

Curtis L. Kebler
RELIANT RESOURCES, INC.
8996 Etiwanda Avenue
Rancho Cucamonga, California 91739

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Philip Key
RENEWABLE ENERGY LEADERSHIP
GROUP
10631 E. Autumn Sage Drive
Scottsdale, Arizona 85259

Paul Bullis
OFFICE OF THE ATTORNEY GENERAL
1275 W. Washington Street
Phoenix, Arizona 85007

Laurie Woodall
OFFICE OF THE ATTORNEY GENERAL
15 S. 15th Avenue
Phoenix, Arizona 85007

Donna M. Bronski
CITY OF SCOTTSDALE
3939 N. Drinkwater Blvd
Scottsdale, Arizona 85251

Larry F. Eisenstat
Frederick D. Ochsenhirt
Michael R. Engleman
DICKSTEIN SHAPIRO MORIN & OSHINSKY
LLP
2101 L Street, NW
Washington, DC 20037-1526

David A. Crabtree
Dierdre A. Brown
TECO POWER SERVICES CORP.
P.O. Box 111
Tampa, Florida 33602

Michael A. Trentel
Patrick W. Burnett
PANDA ENERGY INTERNATIONAL INC
4100 Spring Valley, Suite 1010
Dallas, Texas 75244

Theodore E. Roberts
SEMPRA ENERGY RESOURCES
101 Ash Street, HQ 12-B
San Diego, California 92101-3017

Jesse Dillon
PPL Services Corp.
2 N. Ninth Street
Allentown, Pennsylvania 18101-1179

DOCKET NO. E-01345A-02-0707

Gary A. Dodge
HATCH, JAMES & DODGE
10 W. Broadway, Suite 400
Salt Lake City, Utah 84101

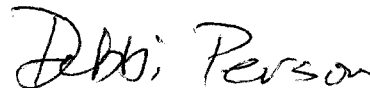
Ronald W. Grossarth
Public Service Co. of New Mexico
2401 Aztec NE
Albuquerque, NM 87107

Christopher Kempley, Chief Counsel
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, Arizona 85007

Ernest G. Johnson, Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

ARIZONA REPORTING SERVICE, INC.
2627 N. Third Street, Suite Three
Phoenix, Arizona 85004-1104

By:



Debbi Person
Secretary for Lyn Farmer



0000048804

INTERVENTION

ORIGINAL

MARK E. CHADWICK *
 MICHAEL S. GREEN
 KATHLEEN DELANEY WINGER
 EVELYN PATRICK BOSS **
 LAURA P. CHIASSON
 * Also Admitted in Colorado
 ** Also Admitted in Washington State

MICHAEL M. RACY (NON-LAWYER)
 GOVERNMENT RELATIONS DIRECTOR
 DIRECT LINE: (520) 906-4646

MEREDITH LEYVA (NON-LAWYER)
 PUBLIC RELATIONS MANAGEMENT

MUNGER CHADWICK, P.L.C.

ATTORNEYS AT LAW
 A PROFESSIONAL LIMITED LIABILITY COMPANY
 NATIONAL BANK PLAZA
 333 NORTH WILMOT, SUITE 300
 TUCSON, ARIZONA 85711
 (520) 721-1900
 FAX (520) 747-1550
 MungerChadwick.com

PHOENIX APPOINTMENT ADDRESS:
 5225 N. CENTRAL
 SUITE 235
 PHOENIX, ARIZONA 85012-1452
 (602) 230-1850

OF COUNSEL
 LAWRENCE V. ROBERTSON, JR.
 ADMITTED TO PRACTICE IN:
 ARIZONA, COLORADO, MONTANA,
 NEVADA, TEXAS, WYOMING,
 DISTRICT OF COLUMBIA

OF COUNSEL
 MILLER, LA SOTA AND PETERS, P.L.C.
 PHOENIX, ARIZONA

OF COUNSEL
 LIZÁRRAGA, ROBLES, TAPIA Y CABRERA S.C.
 HERMOSILLO, SONORA, MEXICO
 (LICENSED SOLELY IN MEXICO)

September 27, 2002

Arizona Corporation Commission

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SEP 27 2002

Colleen Ryan, Supervisor
 Document Control
 Arizona Corporation Commission
 1200 W. Washington
 Phoenix, AZ 85007

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AZ CORP COMMISSION
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2002 SEP 27 A 10:51

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Re: Docket No. E-01345A-02-0707
 In the matter of Application of Arizona Public Service Company

Dear Ms. Ryan:

Enclosed for filing in the above-captioned proceeding are the original and thirteen (13) copies of Sempra Energy Resources' Application for Leave to Intervene. Also enclosed are two additional copies to be conformed and returned to our office.

Please let me know if you have any questions, and thank you for your assistance.

Sincerely,

Lawrence V. Robertson, Jr.

LVR:cl
 enclosures

INTERVENTION

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN

JIM IRVIN
COMMISSIONER

MARC SPITZER
COMMISSIONER

Arizona Corporation Commission

DOCKETED

SEP 27 2002

DOCKETED BY

CR

IN THE MATTER OF THE)
APPLICATION OF ARIZONA PUBLIC)
SERVICE COMPANY FOR AN ORDER)
OR ORDERS AUTHORIZING IT TO)
ISSUE, INCUR, OR ASSUME)
EVIDENCES OF LONG-TERM)
INDEBTEDNESS; TO ACQUIRE A)
FINANCIAL INTEREST OR INTERESTS)
IN AN AFFILIATE OR AFFILIATES; TO)
LEND MONEY TO AN AFFILIATES OR)
AFFILIATES; AND TO GUARANTEE)
THE OBLIGATIONS OF AN AFFILIATE)
OR AFFILIATES)

Docket No. E-01345A-02-0707

APPLICATION FOR
LEAVE TO INTERVENE

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ARIZONA CORPORATION COMMISSION
DOCUMENT CONTROL

Pursuant to A.A.C. R14-3-105 and the Chief Administrative Law Judge's September 24, 2002 oral procedural directive, Sempra Energy Resources ("Sempra"), by and through its undersigned attorney, hereby submits this Application for Leave to Intervene ("Application") in the above-captioned proceeding. In support of the Application, Sempra represents the following:

I.

IDENTITY OF APPLICANT

Sempra is a corporation organized under the laws of the State of California, and is qualified to do business in the State of Arizona. Sempra is engaged in the development and operation of

1 electric generation facilities, and the sale of electricity at wholesale in the competitive market in
2 several western states. In Arizona, Sempra has been authorized by the Arizona Power Plant and
3 Transmission Line Siting Committee and the Commission to site and construct a 1250 megawatt
4 (nominal) electric generation facility for such purpose. That facility is known as the Mesquite Power
5 Station, and it is currently under construction near the community of Arlington in Maricopa County,
6 Arizona. It is anticipated that the Mesquite facility will commence commercial operation in the
7 second quarter of 2003. Capacity and energy from that facility will be sold into the competitive
8 wholesale electric market.
9

10
11 Sempra has been an active participant during the past year in proceedings before the
12 Commission relating to the Commission's ongoing efforts to restructure the electric utility industry
13 in Arizona, and facilitate the development of a competitive wholesale electric market. These
14 proceedings have included both the Track "A" and Track "B" phases of the Commission's Generic
15 Proceedings Concerning Electric Restructuring Issues (Docket No. E-00000A-02-0051), Arizona
16 Public Service Company's Request for Variance (Docket No. E-01345A-01-0822) and Tucson
17 Electric Power Company's Application for Variance (Docket No. E-01933A-02-0069). Sempra's
18 interest has been, and continues to be, in any Commission proceedings and decisions which may
19 have an effect upon the development of a competitive wholesale electric market in Arizona, and the
20 ability of unaffiliated competitors such as Sempra to effectively compete therein.¹
21
22

23
24 ¹ As used herein, the term "unaffiliated" refers to wholesale electric generation entities who do not
25 have a corporate or financial affiliation with an Arizona Utility Distribution Company that will be
26 procuring electric power and energy from the competitive wholesale electric market pursuant to the
27
28

II.

NATURE OF APPLICANT'S INTEREST

The above-captioned proceeding is of such a nature. Pinnacle West Energy Corporation ("PWEC") was specifically formed for the purpose of competing as a wholesale electric generator in the competitive wholesale electric market being developed in Arizona and other western states. Pinnacle West Capital Corporation ("Pinnacle West") is the parent company of both PWEC and Arizona Public Service Company ("APS"). Thus, PWEC and APS are affiliated with one another, and PWEC is an affiliated competitor in the same competitive wholesale electric market in which Sempra will compete.

By means of its September 16, 2002 Application, APS is requesting several financing approvals and authorizations from the Commission. These include the following:

"(a) authorizing APS to assume, issue, or incur up to \$500,000,000 in aggregate principal amount of Recapitalization Debt (as discussed and defined herein) in connection with the refinancing or recapitalization of costs incurred by Pinnacle West Capital corporation ("Pinnacle West") and Pinnacle West Energy Corporation ("PWEC") in the financing of PWEC's construction of West Phoenix CC Units 4 and 5, Redhawk Units 1 and 2, and Saguaro CT Unit 3 (collectively referred to as the "PWEC Assets");

* * *

"(c) authorizing APS to guarantee the obligations (including principal, interest, and associated fees, charges and expenses) of PWEC and /or PWCC ("APS Guarantees") up to an aggregate principal amount of \$500,000,000 (less any Recapitalization Debt) for a period not to exceed a weighted

Track "B" process.

1 average life of 10 years; . . .”

2 [APS Application at page 1, lines 16-19.5 and lines 22-24,
3 respectively]

4 APS’ reasons for seeking approval and authorization to extend its financial resources and
5 credit to PWEC and Pinnacle West are stated elsewhere in its September 16, 2002 Application.

6 They include the following:

7
8 “With no divestiture, or no prospect of a long-term purchase power
9 agreement. . . PWEC is simply not creditworthy under present market
10 conditions absent credit support from APS.” [APS Application at
11 page 4, lines 18-21] [emphasis added]²

12 “Without permanent financing in place and with no potential to
13 obtain financing on commercially reasonable terms, if at all, PWEC
14 cannot effectively compete in the competitive wholesale market under
15 the present credit constraints in that market.” [APS Application at
16 page 14, lines 1-3] [emphasis added]

17 “Exhibit F indicates that APS can accommodate the increased debt
18 authorization sought by the Application without a loss of the
19 Company’s overall credit quality or debt rating. Such debt would
20 have an immaterial effect on the Company’s cost of capital.” [APS
21 Application at page 14, lines 20-23] [emphasis added]

22 In effect, what APS is proposing is to use its financial resources and credit to prop up its
23 wholesale electric generation affiliate, in order that that affiliate may more effectively compete in
24 that competitive wholesale electric market which will seek to serve APS’ “contestable load” pursuant
25

26
27 ² It should be noted that those same “present market conditions” confront unaffiliated wholesale
28 competitors as well, including those who will endeavor to actively participate and compete in the
competitive procurement process being developed in Track “B” of the generic electric restructuring
proceeding.

1 to the procurement process which is being developed in Track "B". In this regard, APS blandly
2 states:

3
4 "APS also wishes to make clear that this Application does not affect
5 nor is it intended to affect the Commission's consideration of, or the
6 Company's position on, any of the "Track B" issues identified in
7 Commission Docket No. E-00000A-02-0051. This too was an
8 express part of the Commission's order in Decision No. 65154. (Id.
9 at pp. 33-34, Tenth Ordering Paragraph.)"³

10 However, despite such "reassurance," the reality is that the approvals and authorizations APS seeks
11 through its Application would affect (i) the competitive procurement process resulting from Track
12 "B" and (ii) those unaffiliated competitors participating therein. In this instance, use of APS'
13 financial resources and credit in the manner proposed would clearly and inevitably "tilt" the
14 competitive playing field in favor of its affiliate (PWEC) from that level that would exist if, as APS
15 alleges, that affiliate's credit rating were downgraded. That advantage could skew competitive
16 market forces that would otherwise operate. Also, with APS being in the position of a creditor of
17 PWEC, it should be noted that there would be a risk that APS would be biased in favor of PWEC in
18 the competitive solicitation, given PWEC's need for revenues to service the loan(s) or loan
19 guarantee(s) from APS.

20 As a consequence, Sempra will be "directly and substantially affected by the proceedings"
21 herein in question in the manner contemplated by A.A.C. R14-3-105(A). Moreover, Sempra's
22

23 ³ It should be noted that the Tenth Ordering Paragraph refers to an application to acquire PWEC's
24 generating assets which APS has acknowledged it has not made to date, and did not make within the
25 time period specified in Decision No. 65154.

MUNGER CHADWICK, P.L.C.
ATTORNEYS AT LAW
NATIONAL BANK PLAZA
333 NORTH WILMOT, SUITE 300
TUCSON, ARIZONA 85711
(520) 721-1900

1 intervention and participation would not unduly broaden the issues which have been presented by the
2 September 16, 2002 Application. How Pinnacle West and PWEC came to be in the circumstances of
3 which they and APS now complain, and whether or not those circumstances are the result of a
4 Commission "reversal of course" or other factors, is one category of issues. Another category of
5 issues pertains to what would be the results and effects of Commission approval of APS' requests
6 and prayer for relief on the results of the Track "B" process and the Commission's efforts to develop
7 a competitive wholesale electric market. When viewed in that latter context, it is patently evident
8 that Sempra and other merchant plant generators will be "directly and substantially affected by the
9 proceedings" to be conducted in the instant docket.
10

11
12 WHEREFORE, Sempra requests that the Chief Administrative Law Judge or Commission
13 enter an order granting this Application for Leave to Intervene, thereby according to Sempra all
14 rights of participation in the above-captioned proceeding as a party of record.
15

16 Dated this 26TH day of September, 2002.

17 Respectfully submitted,
18

19
20 By: Lawrence V. Robertson, Jr.
21 Lawrence V. Robertson, Jr.
22 Munger Chadwick, P.L.C.

23 and

24 Theodore E. Roberts
25 Sempra Energy Resources
26 101 Ash Street, HQ 12-B
27 San Diego, California 92101-3017

28 Attorneys for Sempra Energy Resources

1 The original and ten (13)
2 copies of the above Application
3 for Leave to Intervene was filed
4 on September 27, 2002 with
Docket Control.

5 Copies were hand-delivered, e-mailed,
6 or mailed to the following individuals:

7 Lynn Farmer
8 Chief Administrative Law Judge
9 Arizona Corporation Commission
10 1200 West Washington
Phoenix, Arizona 85007

11 Christopher Kempley, Chief Counsel
12 ARIZONA CORPORATION COMMISSION
13 Legal Division
14 1200 West Washington
Phoenix, AZ 85007

15 Ernest Johnson, Director
16 ARIZONA CORPORATION COMMISSION
17 Utilities Division
1200 West Washington
Phoenix, AZ 85007

18 Matthew P. Feeney
19 Jeffrey B. Guldner
20 SNELL & WILMER
21 One Arizona Center
400 E. Van Buren
Phoenix, Arizona 85004

22 Thomas L. Mumaw
23 PINNACLE WEST CAPITAL CORP
24 LAW DEPARTMENT
25 P.O. Box 53999, MS 8695
Phoenix, Arizona 85004-3999

26 Jay L. Shapiro
27 FENNEMORE CRAIG
28 3003 N. Central Avenue, Suite 2600
Phoenix, Arizona 85012

Arizona Reporting Service, Inc.
2627 N. Third Street, Suite Three
Phoenix, Arizona 85004-1103

Lindy Funkhouser
Scott S. Wakefield
RUCO
1110 W. Washington, Suite 220
Phoenix, Arizona 850070

Michael A. Curtis
William P. Sullivan
Paul R. Michaud
MARTINEZ & CURTIS, P.C.
2712 North 7th Street
Phoenix, Arizona 85006

Walter W. Meek, President
ARIZONA UTILITY INVESTORS
ASSOCIATION
2100 N. Central Avenue, Suite 210
Phoenix, Arizona 85004

Mary-Ellen Kane
ACAA
2627 N. 3rd Street, Suite Two
Phoenix, Arizona 85004

Albert Sterman
ARIZONA CONSUMERS COUNCIL
2849 East 8th Street
Tucson, Arizona 85716

1 Jay I. Moyes
2 MOYES STOREY
3 3003 N. Central Ave., Suite 1250
4 Phoenix, Arizona 85012

5 Roger K. Ferland
6 QUARLES & BRADY STREICH LANG,
7 L.L.P.
8 Renaissance One
9 Two North Central Avenue
10 Phoenix, Arizona 85004-2391

11 Charles T. Stevens
12 Arizonans for Electric Choice & Competition
13 245 W. Roosevelt
14 Phoenix, Arizona 85003

15 Greg Patterson
16 5432 E. Avalon
17 Phoenix, Arizona 85018

18 Aaron Thomas
19 AES NewEnergy
20 350 S. Grand Avenue, Suite 2950
21 Los Angeles, California 90071

22 Gary A. Dodge
23 HATCH, JAMES & DODGE
24 10 W. Broadway, Suite 400
25 Salt Lake City, Utah 84101

26 
27
28